

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MICHAEL L. NASH,

Petitioner,

-vs-

Case No. 13-C-889

**WILLIAM POLLARD, Warden,
Waupun Correctional Institution**

Respondent.

DECISION AND ORDER

Michael Nash moves to stay these proceedings while he exhausts his unexhausted claims in state court. It “likely would be an abuse of discretion for a district court to deny a stay and to dismiss a mixed petition if the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.” *Rhines v. Weber*, 544 U.S. 269, 278 (2005). Nash argues that he has good cause for failing to exhaust because his appellate counsel failed to raise certain claims, even though they were “significant and obvious and clearly stronger than the issues raised on appeal.” This is not enough to establish good cause. “Virtually everyone who has an unexhausted claim has this same circumstance: if counsel presented the claim in the petition for review, it would have been exhausted.” *Hernandez v. Cal.*, 2010 WL 1854416, at *2 (N.D. Cal. May 6, 2010); *Sullivan v. Saba*, 840 F. Supp. 2d 429, 437 (D. Mass. 2012) (ineffective assistance of counsel or the strategic decisions

of counsel insufficient to establish good cause under *Rhines*).

Therefore, Nash's motion to stay [ECF No. 2] is **DENIED**. This matter will be dismissed unless, within **thirty (30) days** of the date of this Order, Nash files a request to dismiss the unexhausted claims in his petition and proceed on the merits of the exhausted claims.

Dated at Milwaukee, Wisconsin, this 25th day of September, 2013.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge